

# RECIPROCAL ACCESS AND EASEMENT EXCHANGE PROCEDURES

## I Authority

The authority for the Department to negotiate reciprocal access agreements including easements is contained in §77-1-617.

The authority for the Department to issue easements on State land is contained in §77-2-101.

The authority for the Department to conduct land exchanges is contained in §77-2-201 through §77-2-203.

## II Objectives

It is the Department's objective and the trust's best interest to obtain access to tracts of state land either by reciprocity when state tracts are isolated or easement exchange when not isolated.

## III Principles and Application of Reciprocal Access Agreements and Easement Exchange

- A. Reciprocal access is a method established by statute whereby the DNRC can acquire access to **isolated** school trust land by exchanging an equal right on trust land. Rights do not have to be equal if the trust beneficiary burdened by reciprocity is compensated.
- B. Easement exchange is a method whereby the DNRC can acquire access to **non-isolated** school trust lands through land exchange procedures.
- C. The local area/field office, subject to the following conditions, may negotiate reciprocal access agreements or easement exchanges for use of new, proposed or existing roads.
  - 1. For reciprocity, the tract(s) the state is acquiring access to must be "isolated" in either a legal sense (i.e. there is no legal access to the state land) or there are portions of the tract that have substantial physical restrictions. A state tract may have legal access and be burdened by reciprocity as long as one or more state tracts obtain access through the reciprocal agreement.
  - 2. Equal rights must be exchanged or the trust compensated if equal rights are not obtained. It is the Department's preference to acquire permanent easements for all legal purposes. However, more restrictive easements may be acceptable if the trust is benefited and the easement relinquished on state land has similar restrictions.
  - 3. The trust that is burdened by an easement relinquished must be benefited by an easement received. If the tract that is burdened and not advantaged is not the same trust as the other parcels obtaining access, the burdened trust must be compensated for land value.
  - 4. The trust must receive equal or greater value. The appraised land value of the easement relinquished must be less than or equal to the appraised land value of the easement received. If not, the difference in value owed the trust must be paid in cash. The SUMB may consider and establish short-term balancing agreements for road values with cooperators that have substantial intermingled ownership and frequently participate in reciprocal access exchanges.

5. The decision to exchange easements is subject to MEPA review (including archaeological under the Antiquities Act) and must be documented and supported by a Decision or Finding in an EA or EIS.
6. The authority to dispose of an interest in trust land rests with the Land Board. Therefore, the Board must approve easements issued on trust lands as part of a reciprocal access agreement or easement exchange.

#### IV. Procedures

The following procedures apply to reciprocal access agreements. Items in **bold** are additional steps required for easement exchanges when reciprocal access statute is not applicable.

- A) Area/Field Office and cooperating landowner initiate proposal for Reciprocal Access Agreement or easement exchange. **If an easement exchange is proposed, §77-2-204 requires notification of the proposal to the lessee by certified mail and their right to present comments to the Board.** The proposal shall include:
  - 1) Description of state tracts to which access would be acquired.
  - 2) Description of cooperators ownership on which state would acquire an easement.
  - 3) Description of state ownership on which cooperator would like to acquire an easement.
  - 4) Description of cooperators ownership to which they are acquiring access.
  - 5) Description of specific rights to be acquired and relinquished and a discussion of whether or not public access rights will be acquired. If access rights for the public are not acquired, then a specific discussion regarding the reason(s) why must be included.
  - 6) Maps indicating existing roads or approximate location of roads to be constructed relative to the Reciprocal Access Agreement or easement exchange. If access is available to other public lands within the area, maps should also show the surrounding roads as they relate to additional access opportunities for the public.
  - 7) Maps indicating adjacent ownership of properties involved.
  - 8) An estimate of approximate easement acreage state would acquire and relinquish.
  - 9) A summary of the benefits of the proposal, including discussion of rights agreed upon, details of associated activities (e.g. timber sale) and cost estimates of construction/reconstruction.
  - 10) **If the proposal is an easement exchange, the seven criteria in Land Board Exchange policy must be discussed. (Value, acreage, income, consolidation, access, long term appreciation and navigable lands)**
- B) Area Office reviews and authorizes proceeding with proposal or recommends modification. If sensitive issues are present, Area Office will consult with SUMB or FMB.

- C) Area/Field Office prepares and sends to the reciprocating party a letter of intent with the draft, standard reciprocal agreement attached. At a minimum, the agreement should include:
- 1) Specific description of rights to be exchanged.
  - 2) Description and map of the roads proposed for exchange.
  - 3) A description of lands to be accessed by the easement exchange.
  - 4) Standards and specifications of the roads included in the exchange.
  - 5) Description of construction or reconstruction needs, inspection and acceptance procedures.
  - 6) Maintenance and weed control responsibilities.
  - 7) Methods of determining road/easement value or process for settlement if values are not equal.
  - 8) Survey and appraisal standards
  - 9) Distribution and responsibility of costs associated with developing the exchange package such as survey, appraisal and environmental analysis.
- D) When applicable, Area/Field Office requests Title Report from a title company. The title report should verify current ownership of property, who has the right to issue an easement on the roads involved, who has signatory authority and whether there are any liens or other easements on the road. Copies of pertinent documents should be specifically requested.
- E) Cooperator or Area/Field Office contacts the lessee and secures a lessee settlement form. If damages are anticipated, the cooperator (not DNRC) must negotiate reimbursement to the lessee.
- F) Field office conducts MEPA review of proposed easement on state land. Analysis of impacts on other ownerships that may occur as a result of granting the easement on state land (connected actions) is not required. **If the proposal is an easement exchange, a public hearing must be held in the county containing the state land per §77-2-204. Consult with SUMB for appropriate format.**
- G) Area/Field Office or cooperator estimates easement values using fee schedules, contract appraisal or requests appraisal from SUMB and documents estimate of improvement costs (i.e. roads, bridges, etc.).
- H) Area/Field Office prepares draft easement deeds using standard format (appendix). Changes or additions to the standard format should be highlighted or indicated by bold type to facilitate review by SUMB.
- I) The reciprocal agreement is signed by the cooperator using the standard format (appendix). Agreement includes the final acreage, costs, value estimates, terms and conditions.
- J) Area/Field Office prepares package for SUMB review and Land Board Approval. Package shall include:
- 1) Original, signed Reciprocal Access Agreement
  - 2) MEPA document for the easement transaction (as a stand-alone document)
  - 3) Plats of road easements sufficient for recordation
  - 4) Explanation of how values were derived or copy of appraisal
  - 5) Lessee settlement documentation
  - 6) Title commitment

- 7) Recommendation, description of special circumstances (including specific discussion of public access in the area) and summary of benefit to trust
  - 8) Easement Deed (paper copy with package, electronic version to Helena)
  - 9) Tabulation sheet with legal description of properties by section (to 40-acre subdivision), value, acres and Trust debits and credits
  - 10) If payment is due, how will it be paid? (e.g. add to balance sheet, timber sale, R/W budget, cooperator waives compensation)
- K) Upon approval by Land Board, final deeds are processed for signature.
- 1) SUMB-Helena sends deed from State to cooperator to Area/Field Office.
  - 2) Area/Field Office arranges for cooperator to sign acceptance block of deed from the State. SUMB-Helena obtains signature of Director for cooperator to State deed.
  - 3) Signed deed from State to cooperator is returned to SUMB-Helena for execution and payment, if made, is sent to SUMB-Missoula. SUMB-Helena forwards signed deed from cooperator to State to Area/Field Office.
  - 4) Upon final execution by Director, Governor and Secretary of State, SUMB-Helena returns original executed deed from State to cooperator to Area/Field Office.
  - 5) Area/Field Office exchanges original, executed deeds with cooperator and records cooperator to State deed at appropriate County Clerk and Recorder's Office.
  - 6) After recordation, Area/Field Office makes copy for file and forwards original, recorded document to SUMB-Helena for filing.